IN THE

Supreme Court of the United States

October Term, 1942

Case No. 28

THE WASHINGTON TERMINAL COMPANY,

Petitioner,

vs.

F. E. BOSWELL, ET AL.,

Respondents.

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

This action arose out of a complaint filed by the petitioner as plaintiff in the United States District Court for the District of Columbia. Certain of the petitioner's employees were named as defendants, and relief was sought by declaratory judgment. Specifically, the District Court was asked, first, "to render a declaratory decree or judgment declaring that the contract between the plaintiff and the classes of employees of which the defendants are members" did not establish in the defendants certain rights which they claimed; and second, to declare a certain award of the National Railroad Adjustment Board to be "of no legal force and effect."

It is to be noted that the suit considered from the point of view of either phase of the relief asked is one designed to reexamine a controversy theretofore decided by the National Railroad Adjustment Board, that a judgment favorable to the plaintiff would necessarily supersede the Board's decision, and that the action is essentially one seeking a judicial review of that decision.

The defendants filed an answer, the first two defenses of which challenged the sufficiency of the complaint on the ground that it failed to state a cause of action for declaratory relief. After a hearing on the legal issues thus raised, the District Court sustained the defenses and dismissed the complaint without opinion.

An appeal was taken by the plaintiff to the United States Court of Appeals for the District of Columbia, which affirmed the decision of the District Court in the case of *Washington Terminal Company vs. Boswell,* 124 Fed. 2d 235, R. 331-381, inc. The case comes to this court on a writ of *certiorari.*

STATEMENT OF ISSUES

The only question in this case is that of whether the petitioner may secure a judical review of a decision of the National Railroad Adjustment Board by declaratory judgment in substitution for the method of review provided in the Railway Labor Act for the decisions of this tribunal.

While an extended discussion of the provisions of this statute* will be given in the body of this brief, a summary statement of them is desirable here in order to clarify the scope of the issue above stated.

*The Railway Labor Act was originally enacted in 1926, and was amended in 1934. In its present form, it comprises Chapter 8, Title 45, of the United States Code. Those portions of the statute relevant to this case are reprinted as Appendix I of this brief.

One of the general purposes of the Railway Labor Act is that of providing for the orderly settlement of disputes between carriers and their employees growing out of the interpretation and application of collective agreements. As a means of carrying out this purpose, the statute provides a complete process consisting of three steps:

First—A given dispute is required to be handled through a succession of conferences between the employees or their representatives and various officials of the railroad, concluding with the highest operating official with whom the employees are authorized to confer.

Second—If adjustment is not reached through conference, it is provided that the dispute may be submitted by either party or both parties to a tribunal known as the National Railroad Adjustment Board. This Board, which is created by the statute, is a bi-partisan Board, composed of members selected by the carriers and the national organizations of employees in equal numbers. Upon reaching a decision in a given case which has been referred to it, the Board issues an award embodying its findings, and also issues an order directed to the carrier commanding it to comply.

Third—The Board itself has no authority to enforce compliance with its orders, or to institute legal proceedings for that purpose. Enforcement may be had only through suit brought by the party who petitioned the Board in the first instance, or any party for whose benefit the order was made. In such an action for enforcement, the court wherein it is filed is empowered to review the action of the Board, and either enforce or set aside its award and order.

It is to be noted that the third step mentioned above may be initiated only by employees who have secured an award and order from the Board. The carrier, according

to the terms of the statute, has no right to resort to the courts as plaintiff but it is under no legal obligation to comply with an order of the Adjustment Board until a suit has been brought against it and carried to a judgment in favor of the plaintiff.

In the present case the first two of the statutory steps have been completed, and an award and order have been issued by the Adjustment Board. The third step has never been initiated by the employees.* It is the purpose of this action to establish a substitute for this third step, the proposed substitute to take the form of an action for declaratory judgment brought by the carrier. The sole issue presented to the court, therefore, is that of whether such a substitution of remedies is permissible.

OUTLINE OF ARGUMENT

It is the position of the respondents that the method of review provided by the Railway Labor Act for orders of the Adjustment Board is exclusive, and precludes any action on the part of a carrier to seek review by declaratory judgment. This position is supported by:

I. A consideration of general principles of law governing judicial review of administrative orders.
   - A. An adequate method of review established by statute for the orders of an administrative tribunal excludes resort to other remedies.
   - B. A review which may be secured in the course of statutory enforcement proceedings is an adequate method and therefore exclusive.
   - C. The Declaratory Judgments Act has not made extra-statutory review of administrative orders available in cases where it was not available before.

II. A consideration of the Railway Labor Act and the National Railroad Adjustment Board.

*In fact, the third step is now impossible in this case because of the fact that employees may institute an enforcement action only within a period of two years after the effective date of an order of the Board. This period has elapsed since the date of the order involved in this case.

A. The functions of the Adjustment Board are such that judicial review of its orders should be confined strictly to that provided in the statute.
B. It is the intent of the Railway Labor Act that the procedure established therein for the review of Adjustment Board orders shall be exclusive.

ARGUMENT

I. A Consideration of General Principles of Law Governing Judicial Review of Administrative Orders

A. AN ADEQUATE METHOD OF REVIEW ESTABLISHED BY STATUTE FOR THE ORDERS OF AN ADMINISTRATIVE TRIBUNAL EXCLUDES RESORT TO OTHER REMEDIES.

The courts in a number of cases dealing with various administrative agencies and a wide variety of statutory provisions, have held that, where the statute provides an adequate method for the judicial review of administrative orders, that method must be followed.

The Federal Radio Act of 1927 permitted any person aggrieved by an order of the Federal Radio Commission to appeal to the Court of Appeals for the District of Columbia (44 Stat. L. 1169). The case of *White vs. Johnson*, 282 U. S. 367, involved a situation where the Commission had refused to renew the plaintiff's broadcasting license except on terms considered disadvantageous by him. He failed to perfect an appeal according to the method prescribed by the statute, but instead filed a bill in equity in another federal court seeking to enjoin the enforcement of the criminal provisions of the Act which would be applicable to him if he violated the order in question. The court held this procedure to be improper on the ground that the statutory remedy was an exclusive one. We quote the following passage from the opinion:

> "If the proceeding was an unfair one, as lacking adequate notice, full hearing, or development of all relevant facts, appellant had a remedy provided by the statute, which in the orderly processes of the administration of the law he was bound to pursue." (P. 374.)

To the same effect, see *American Bond and Mortgage Company vs. U. S.*, 52 Fed. 2d 318, and *Sykes vs. Jenny Wren Company*, 78 Fed. 2d 729.

The case of *Abe Rafelson Company vs. Tugwell*, 79 Fed. 2d 653, was an action to enjoin the Secretary of Agriculture from prosecuting the plaintiff for its failure to abide by a reparations order entered by the Secretary under the Perishable Agricultural Commodities Act. This statute provided for the enforcement of reparations orders by a procedure almost identical to that provided for awards of the National Railroad Adjustment Board, (U. S. C. Title 47, 499 g(b); 54 Stat. 214) and also provided that any person adversely affected by such an order might file a proceeding in a Federal District Court challenging the same with the proviso that: "Such suit in the District Court shall be a trial *de novo* and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be *prima facie* evidence of the facts therein stated." (U. S. C. Title 7, 499 g(c); 54 Stat. 214.)

The court held that inasmuch as the plaintiff had an adequate remedy under the statute an action for injunction would not lie.

The Securities and Exchange Act provides that any person aggrieved by an order of the Securities and Exchange Commission may apply to a Federal Circuit Court of Appeals for a review thereof. (U. S. C. Title 15, Section 78y.)

The case of *Securities and Exchange Commission vs. Andrews*, 88 Fed. 2d 441, grew out of a proceeding instituted by the Commission under Section 21e of the Act (U. S. C. Title 15, Section 78u) to enjoin alleged violations. The defendant prosecuted a cross-bill seeking to enjoin the Commission "from all activity" with respect to the securities in question. This cross-bill was dismissed by the lower court and its ruling was affirmed by the Circuit Court of Appeals, which said:

> "It is perfectly clear that a suit against the Commission, an administrative agency of the United States, can be maintained only in the courts and upon the terms specified in the statute. *Illinois Central R. R. Co. vs. Public Utilities Comm.*, 245 U. S. 493, 504, 38 S. Ct. 170, 62 L. Ed. 425, Section 25(a) of the act (15 U. S. C. A. Sec. 78y) provides how and where a person aggrieved by an order of the Commission may obtain judicial review of such order." (pp. 441-442.)

Thus, where a statute provides a method whereby the validity of administrative action may be tested in the courts, that method is held to exclude other remedies. The courts do not appear to have been influenced in their conclusions by any consideration of the presence or absence of a specific statutory direction that the method of review provided was to be exclusive.

B. A REVIEW WHICH MAY BE SECURED IN THE COURSE OF STATUTORY ENFORCEMENT PROCEEDINGS IS AN ADEQUATE METHOD AND THEREFORE EXCLUSIVE

The cases considered in the above section of the brief dealt with situations where the statute provided a means whereby a party who considered himself aggrieved by an administrative order might institute statutory review pro-

ceedings as a plaintiff therein. The same conclusion has been reached, however, where the statutory review is available only through the defense of an action brought to enforce the order in question. The following are examples:

Decisions of the Federal Trade Commission have until recently been enforceable only in the courts and after the successful conclusion of actions brought for that purpose. The fact that the defendant in such proceedings would have available to him as defenses all claims of asserted illegality in the order of the Commission has been repeatedly held to bar him from resorting to the courts as a plaintiff seeking extra-statutory review. This was decided by the Supreme Court in the case of *Federal Trade Commission vs. Claire Furnace Company*, 274 U. S. 160. The court said, in the course of its opinion:

> "There was nothing which the commission could have done to secure enforcement of the challenged orders except to request the Attorney General to institute proceedings for a mandamus or supply him with the necessary facts for an action to enforce the incurred forfeitures. If, exercising his discretion, he had instituted either proceeding the defendant therein would have been fully heard and could have adequately and effectively presented every ground of objection sought to be presented now. Consequently, the trial court should have refused to entertain the bill in equity for an injunction." (Pp. 173-174.)

See also to the same effect the cases of *Royal Baking Powder Company vs. Federal Trade Commission*, 32 Fed. 2d 966, and *Federal Trade Commission vs. Maynard Coal Company*, 22 Fed. 2d 873.

The National Labor Relations Act contains provisions for the enforcement and review of orders of the National Labor Relations Board similar to the provisions of the Federal Trade Commission Act. The statutory procedure

was held to be constitutionally adequate in the case of *National Labor Relations Board vs. Jones and Laughlin Steel Company*, 301 U. S. 1, 46-47, and to be exclusive to the extent that it precludes an attack upon the Board by an action to enjoin a proposed investigation. (*Myers vs. Bethlehem Shipbuilding Company*, 303 U. S. 41, 49.)

It is, of course, true that the National Labor Relations Act further permits a party aggrieved by any order of the Board to petition a Circuit Court of Appeals for relief. He does not have to await an enforcement action and secure his judicial review by that means. The language of the two cases cited above, however, refers specifically to the *enforcement* provisions as providing for an adequate review and there is no reason to believe that the decisions would have been different had the statute contained no other review provision. This conclusion is supported by the language of the United States Circuit Court of Appeals for the Second Circuit in the case of *E. I. DuPont de Nemours and Company vs. Boland*, 85 Fed. 2d 12, a case similar on its facts to the *Myers* case, where, in the course of its opinion, the court said:

> "* * * the provisions of the act for the enforcement and review of cease and desist orders afforded the appellants an adequate, complete, and exclusive remedy." (P. 15.)

See to the same effect the case of *Carlisle Lumber Company vs. Hope*, 83 Fed. 2d 92.

The Interstate Commerce Act provides for the issuance of reparations orders under certain circumstances (U. S. C. Title 49, Section 16(1)) and in a subsequent section provides for the enforcement of such orders in language so nearly identical to that found in Section 3 First (p) of the Railway Labor Act as to lead to the conclusion that the latter named section was copied from the former and was

designed to have the same legal effect.* The exclusive nature of this provision in the Interstate Commerce Act was under consideration in the case of *Brady vs. Interstate Commerce Commission,* 43 Fed. 2d 847. The action was brought by a reparations claimant who was dissatisfied with the amount of reparation awarded him by the Commission. He brought suit under the Urgent Deficiencies Act to set aside the Commission's order. The court held that the special remedy provided by the statute was exclusive, saying:

> "In case a reparation order is not complied with and no suit is brought by the person in whose favor it is made, it amounts to nothing and could not, of course, be the cause of irreparable injury justifying an injunction order. If suit is brought, it proceeds 'in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be *prima facie* evidence of the facts therein stated.' 49 U. S. C. A. Sec. 16(2). As said by the Supreme Court in *Meeker & Co. vs. Lehigh Valley R. R. Co.*, 236 U. S. 412, 430, 35 S. Ct. 328, 335, 59 L. Ed. 644, Ann. Cas. 1916B, 691, the section of the statute making these *prima facie* evidence 'cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury.'

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*The section of the Interstate Commerce Act in question reads as follows:

> "If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the District Court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the District Court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit." (U. S. C. Title 49, Section 2.)

> If, therefore, the carrier deems the order erroneous, it has full opportunity to correct the error or defend against it upon the trial." (P. 852.)

The above case was affirmed without opinion by the Supreme Court in the case of *Brady vs. U. S.*, 283 U. S. 804.

Until the passage of the Declaratory Judgments Act, practically the only procedure available to a party seeking an extra-statutory review of an administrative order was by an action for injunction. All of the cases above cited were of this type. It is not astonishing, therefore, to find that certain of the courts have phrased their jurisdictional conclusions in the language of the familiar principle that equity will not intervene where there exists an adequate remedy at law. The remedy referred to in these cases is, of course, that provided by the statutory review procedure.

While this argument justifies the decisions of those cases wherein it has been employed, it is apparent that it does not express the full reason for the conclusion reached. That reason lies rather in a jurisdictional limitation imposed upon the courts either by their own decisions or by statutory provisions precluding them from substituting another method of procedure for that established by statute and especially designed to provide a means of review for the orders of the administrative agency in question. This limitation extends much farther than a mere cutting off of equitable jurisdiction, and goes to all forms of extra-statutory review whether equitable or not. The correctness of the above conclusion is revealed by the fact that of the cases above cited, five[1] are decided squarely on the ground that ground as supplemental to the fact that there exists an the statutory remedy is exclusive; one[2] mentions this

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(1) *White vs. Johnson; American Bond and Mortgage Company vs. U. S.; Securities and Exchange Commission vs. Andrews; Myers vs. Bethlehem Shipbuilding Company; E. I. DuPont de Nemours and Company vs. Boland.*

(2) *Sykes vs. Jenny Wren Company.*

adequate remedy at law; two[3] are decided without specific reference to the equitable maxim, and two others[4] apply it only after a discussion of the statutory remedy designed to show that it is one peculiarly adapted to the case at hand and which should not be interfered with by injunction. Of the two cases where the opinions are based solely on the point of the existence of an adequate remedy at law,[5] neither decides that the statutory remedy is not an exclusive one; they merely failed to consider that point.

From the foregoing, therefore, we conclude that where a statutory procedure exists wherein and whereby administrative orders may be reviewed and errors corrected, that procedure, if adequate to protect the legal rights of the parties and if affording them their day in court, is exclusive of all other remedies. Where such a procedure is available in the course of a statutory enforcement action, the same rule applies. The mere fact that the complaining party presents his claim of the invalidity of the administrative order as a defense rather than as the basis of a suit instituted by himself is not material. If the order cannot ripen into an enforceable legal obligation, save after legal proceedings wherein its legality may be fully tested, all rights of the parties are fully preserved and they may not seek review by extra-statutory means. This principle is more than a mere limitation upon the equitable powers of the courts. It is a limitation of their basic authority.

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(3) *Carlisle Lumber Company vs. Hope; Brady vs. Interstate Commerce Commission.*

(4) *Federal Trade Commission vs. Claire Furnace Company; Federal Trade Commission vs. Maynard Coal Company.*

(5) *Abe Rafelson Company vs. Tugwell; Royal Baking Powder Company vs. Federal Trade Commission.*

C. THE DECLARATORY JUDGMENTS ACT HAS NOT MADE EXTRA-STATUTORY REVIEW OF ADMINISTRATIVE ORDERS AVAILABLE IN CASES WHERE IT WAS NOT AVAILABLE BEFORE

As already noted, the cases cited in support of the propositions developed in the two preceding sections of this brief have been equity cases where injunctions have been sought. The enactment of the Declaratory Judgments Act, while making available to the courts another remedy, has not affected the limitation of their authority to entertain actions seeking judicial review of administrative orders by proceedings differing from those prescribed by statute.

The operation of the Declaratory Judgments Act is "procedural only" (*Aetna Life Insurance Company vs. Haworth*, 300 U. S. 227, 240), and "does not attempt to change the essential requisites for the exercise of judicial power" (*Ashwander vs. Tennessee Valley Authority*, 297 U. S. 288, 325). Accordingly, this Act does not extend the authority or jurisdiction of the federal courts beyond that enjoyed and exercised by them independent of it. (*American Automobile Insurance Company vs. Freundt*, 103 Fed. 2d 613, 617; *Aetna Casualty and Surety Company vs. Quarles*, 92 Fed. 2d 321; *Davis vs. American Foundry Equipment Company*, 94 Fed. 2d 441.

It is well established that certain limitations exist as to the power of the courts to grant declaratory relief in general.

Professor Borchard, co-author of the Uniform Declaratory Judgments Act, whose treatise on this subject has been widely quoted, states in this connection as follows:

> "Where, however, a *special statutory* method for the determination of the particular type of case has been provided, it is not proper to permit that issue to

be tried by declaration. This would amount to ousting of its jurisdiction a statutory court prescribed for the particular case, and it was not intended that a declaration should be employed for such a purpose."

(Borchard on Declaratory Judgments, pages 156-7.)

(Note: Emphasis the author's.)

In American Jurisprudence, Volume 16, page 295, we find the following statement:

> "A court will not take jurisdiction to render a declaratory judgment where another *statutory remedy has been especially provided for the character of case presented*, if the effect would be to interfere with the right of the parties to appeal to the court given jurisdiction in that particular matter by the statute. Likewise, a declaration will not be made where the purpose is to affect proceedings which may be taken before a public board which has full power to act in the matter and which would not be bound by the declaratory judgment. In accordance with this principle, the courts have refused to enter declaratory judgments in respect of such questions as the validity of assessments, the time for which an employee is entitled to compensation under the Workmen's Compensation Law, the inheritance of personal property, and the status of the plaintiff as the natural son of defendant, where jurisdiction as to these questions was given to other courts or boards." (Emphasis supplied.)

Declaratory judgments acts have been enacted in a number of states, and the state courts have generally limited their scope by refusing to grant declaratory relief as a substitute for a specially provided statutory remedy. A leading case in this connection is that of *Petition of Kariher*, 284 Pa. 455, 131 Atl. 265, decided in 1925. The Supreme Court of Pennsylvania made the following statement as to the law:

> "In all jurisdictions where declaratory judgment practice obtains, the rule is established * * * that a proceeding to obtain such a judgment will not be entertained * * * where another statutory remedy has been specially provided for the character of case in hand."

See also to the same general effect, *City of Erie vs. Phillips*, 323 Pa. 527, 187 Atl. 203; and *Bell Telephone Company of Pennsylvania vs. Lewis*, 313 Pa. 374, 169 Atl. 571.

Another Pennsylvania case, that of *McCalmont vs. McCalmont*, 93 Pa. Sup. Crt. 203, involved an action for declaratory judgment seeking to annul a marriage. The relief sought was refused, the court saying:

> "The state is a party in interest in divorce proceedings and in order to guard against collusion between the parties has prescribed certain forms and procedure which must be observed, including an oath or affirmation by the libellant that the facts contained in the petition or libel are true, to the best of his or her knowledge and belief, and that said complaint is not made out of levity or by collusion and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in said petition or libel; followed by proceedings in court or before a master calculated to sift the evidence thoroughly and satisfy the court of the truth of the matters averred in the libel * * *.
>
> "These safeguards instituted on behalf of the state cannot be swept away by recourse to the Declaratory Judgments Act of 1923. *It should not be resorted to where, as here, a method has already been established for the speedy determination of the issues involved with due regard to the interests of the state as well as of the parties libellant and respondent.*" (Emphasis supplied.)

In the case of *Young vs. Bridges*, 86 N. H. 135, 165 Atl. 272, a declaratory judgment was asked as to the distribution of an estate. It was held that inasmuch as jurisdiction in such matters was specifically conferred upon the Pro-

bate Court by statute, other courts could not be asked to pass thereon through the medium of a declaratory judgment. A similar conclusion was reached in the case of *Stewart vs. Hertin*, 125 Neb. 210, 249 N. W. 552, which involved a guardianship matter.

The Court of Appeals of the State of Kentucky applied the same rule of law in the case of *Moore vs. Louisville Hydro-Electric Company*, 226 Ky. 20, 10 S. W. (2d) 466. In this case the plaintiff had instituted proceedings under the Workmen's Compensation Act of the State for certain alleged injuries. His claim was allowed by the Workmen's Compensation Board as to some particulars, but was rejected insofar as it related to a claim of hernia. The decision as to the hernia was appealed to the Circuit Court and sustained, but was later reversed by the Court of Appeals and compensation ordered. Thereafter another controversy arose as to the time during which plaintiff was entitled to be compensated for the hernia, and this action was filed seeking a declaratory judgment on that point. A demurrer to the petition was sustained in the Circuit Court, which ruling was upheld by the Court of Appeals. The latter court said:

> "It has been often written that the Workman's Compensation Law is *in the nature of an arbitration, and was intended to provide a simple and speedy method whereby employees might be compensated for injuries received.* The entire mechanics of the law shows that it was the legislative intent to vest exclusive, original jurisdiction to hear and determine matters within the purview of the Act in the Workman's Compensation Board. Provisions are made for a review of the findings of that board by the Circuit Court, and an appeal may be taken from the judgment of the Circuit Court to this Court. If the employee may ascertain that he and the employer do not agree about the length of time for which he is entitled to compensation, and then file a petition for a declaration of his rights, likewise the em-

ployer may ask for a declaration of rights, and in that way *substitute the Circuit Court and this court for the Workman's Compensation Board in determining many questions, the determination of which is vested by the law in the Workman's Compensation Board. We cannot approve thus invading the jurisdiction of that Board.*" (Emphasis supplied.)

The same principle has been applied in connection with the Federal Declaratory Judgments Act. In the case of *Aetna Casualty and Surety Company vs. Quarles*, 92 Fed. 2d 321, the United States Circuit Court of Appeals for the Fourth Circuit made the following statement as to the law:

> "The court will refuse a declaration where another court has jurisdiction of the issue, where a proceeding involving identical issues is already pending in another tribunal, *where a special statutory remedy has been provided*, or where another remedy will be more effective or appropriate under the circumstances." (Emphasis supplied.) (P. 325.)

This limitation upon the jurisdiction of the federal courts to issue declaratory judgments was recognized by the Conference Committee, which assisted in the preparation of the present federal court rules. In its comment on Rule 57, which establishes certain conditions for the granting of declaratory relief, the Committee said:

> "A declaration may not be rendered if a *special statutory proceedings* has been provided for the adjudication of some special type of case, but general, ordinary or extraordinary legal remedies, whether regulated by statute or not, are not deemed special statutory proceedings." (Emphasis supplied.)

If the courts are in general limited in their review of administrative orders to the procedure established by the statute creating an administrative agency, which we have found to be the case; if the Declaratory Judgments Act is merely procedural in its effect and does not alter any

general limitations which may exist as to the authority of the federal courts, and if declaratory relief may not be granted in cases where a special statutory remedy exists, it appears to follow as a matter of principle that a declaratory judgment cannot be issued as a means of reviewing an administrative order in substitution for the method of review contemplated by the statute. In the relatively few cases which have considered this question directly, we find that the courts have acted in conformity to this conclusion.

In the case of *Bradley Lumber Company vs. National Labor Relations Board*, 84 Fed. 2d 97, the court said:

> "The new power to make a declaratory decree does not authorize a court of equity by declaration to stop or interfere with administrative proceedings at a point where it would not, under settled principles, have interfered with or stopped them under its power to enjoin."

The above language was quoted with approval in the case of *Utah Fuel Company vs. National Bituminous Coal Commission*, 101 Fed. 2d 426, 431.*

Also in this connection, we call attention to the case of *Newport News Shipbuilding and Drydock Company vs. Schauffler*, 303 U. S. 54, which was a companion case to *Myers vs. Bethlehem Shipbuilding Company, supra*, and which presented very similar points except for the fact that the plaintiff asked a *declaratory judgment* in addition to equitable relief. It is highly significant that the Supreme

*It should be noted that in this case the District Court dismissed the case because of the failure of the bill to state a cause of action. Upon appeal to the Court of Appeals for the District of Columbia, that court concurred in dismissing the bill but on the ground that the District Court had no jurisdiction. Upon further appeal to the Supreme Court, the decision of the Court of Appeals was disapproved on the ground that the administrative ruling involved was not a final order appealable under the statute, but was so damaging to private rights as to justify the invocation of the equitable power of the courts. The Supreme Court affirmed, however, the decision of the District Court. Its action, accordingly, has no bearing upon nor does it minimize the significance of the decision of the Court of Appeals regarding the legal effect of the Declaratory Judgments Act in such situations.

Court decided this case in a very brief opinion, largely on the authority of the Myers case without giving any consideration whatever to the prayer for declaratory relief. It thus indicated that the scope of jurisdiction to review administrative orders is no broader under the Declaratory Judgments Act than under the general equitable powers of the court.

We conclude, therefore, both from principle and precedent, that the Federal Declaratory Judgments Act has not expanded the basic authority of the federal courts in the matter of judicial review of administrative orders, and that relief by declaratory judgment is no more available in this connection than any other form of relief where the effect of granting it will be the substitution of a non-statutory review for a procedure established by the statute under which the administrative agency is acting.

Summary

This section of the brief has been devoted to a consideration of the general legal principles applicable to this case. We have seen that where a statute provides an adequate method of review of the decisions of an administrative tribunal that method is exclusive of all extra-statutory methods. We have seen further that where an administrative order is legally enforceable only through special court proceedings brought for that purpose in the course of which the legal rights of the parties may be adjudicated, such proceedings constitute an adequate and therefore an exclusive method of review. The law does not require that a party to a controversy must be able to assert his rights as a plaintiff. It is sufficient if he is given an opportunity to vindicate them in the defense of an action brought by another. Finally in this connection, we have shown that

the courts have no greater latitude because the action seeks relief by declaratory judgment than that which they would have had were some other form of relief sought.

With these principles fully established, we next wish to direct the court's attention to the Railway Labor Act and the National Railroad Adjustment Board in order to determine whether there is any characteristic peculiar to either which might serve to make the above developed principles of law particularly applicable or inapplicable to them.

II. A Consideration of the Railway Labor Act and the National Railroad Adjustment Board

A. THE FUNCTIONS OF THE ADJUSTMENT BOARD ARE SUCH THAT JUDICIAL REVIEW OF ITS ORDERS SHOULD BE CONFINED STRICTLY TO THAT PROVIDED IN THE STATUTE.

The petitioner does not challange the accuracy of the conclusions reached in the first section of this brief as to the exclusive nature of statutory methods of review for the orders of administrative agencies in general, nor as to the limitation there expressed in connection with the granting of declaratory relief, but contends that these conclusions are not applicable to the decisions of the National Railroad Adjustment Board, and in support of its position, calls attention to certain extraordinary features in the organization and functioning of this agency.

There is no question but that the Board is a unique tribunal. Its membership is bi-partisan rather than non-partisan. Individual members are selected by the carriers and the national organizations of employees in equal numbers and are compensated by the parties selecting them.

The membership, is divided into four autonomous bi- partisan divisions. If the majority of the members of any division cannot agree upon an award in a case submitted to it, a neutral referee is selected who is compensated from the federal treasury, sits with the Division, and breaks the deadlock.

This arrangement, though unusual, is not a sufficient basis for the claim that the Adjustment Board is entirely outside the pale of the administrative agencies of government, nor for the contention that its orders are not subject to those laws of judicial review which are applicable to administrative orders generally. Rather it constitutes a recognition by Congress of the existence of an extraordinary public need and of the necessity of meeting that need by the formation of a tribunal organized on other than stereotyped lines. Such a course is consistent with the whole history of the development of administrative law, which has been characterized by a search for new methods which would be adapted to the settlement of newly realized problems. The form of organization adopted by Congress in establishing the Adjustment Board was one admirably fitted for the purpose of deciding controversies between carriers and employees growing out of the interpretation and application of collective agreements. This conclusion is amply established by a consideration of the history of earlier governmental efforts to provide for the orderly adjustment of such disputes.

It has long been the policy of Congress to foster the development of collective bargaining between carriers and their employees as a means of avoiding labor disputes which might interrupt the functioning of the nation's railroads and inflict serious damage on the public. Disregarding some of the older attempts to accomplish this result, modern efforts along this line were begun with the enact-

ment of the Transportation Act of 1920, and were continued by two later statutes—the Railway Labor Act of 1926 and the Railway Labor Act as amended in 1934. The last named statute is now in effect.

A reference to "collective bargaining" calls to mind a system whereby the employer and the selected representatives of the employees meet to negotiate a collective agreement fixing the wages and terms of employment of the employees as a group. This phase of collective bargaining is well understood. The execution of a collective agreement, however, is only the beginning—not the end of the collective bargaining process.

Such an agreement by its nature covers a large number of varied individuals and situations. If a collective agreement is made, therefore, there will inevitably arise controversies as to exactly how the agreement shall be applied in specific cases. Such controversies, while not as broad in scope as those relating to making or changing agreements, may nevertheless cause as grave disputes between the parties, and in the aggregate may as seriously threaten the disruption of the industry.

The Railway Labor Act of 1934 recognizes the existence of such disputes and the importance of providing a method for adjusting them. It provides this method in these words:

> "Section 3. First (i). The disputes between an employee or group of employees and a carrier or carriers *growing out of grievances or out of the interpretation or application of agreements* concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the

Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis supplied.) (U. S. C. Title 45, Sec. 153 First (i).)

Both employers and employees who desire harmonious labor relations have long been aware of the advantages offered by the conference room. A conference between the employee who has a grievance, and his immediate supervisor *may* bring a ready adjustment of the matter. Too often, however, the attitudes of the direct participants are warped by prejudices and predilections of a personal or local nature. The conference is more likely to succeed if held between *representatives* of the parties, just as attorneys can often arrange settlements of legal actions when their clients cannot.

If an adjustment is not reached in conference on the property between local representatives of the persons who are involved in the dispute, the next logical step is to submit the controversy to a conference off the property, between representatives selected by the carriers generally and by employees generally—or in other words, to an adjustment board.

While local or system adjustment boards have been employed for a long time as a means of settling disputes between train service employees and the carriers, the first use of this procedure which was other than local in character, was embodied in a document known as the "Joint Settlement Awarded by the Committee of National Defense." This was the instrument which formally ended the "8-hour day" controversy during the World War. The "Settlement" which was dated March 19, 1917, contained the following provision:

"It is further agreed that if any differences arise over the application of the foregoing award, they shall be referred to a standing Commission of Eight,

four to be chosen by the National Conference Committee of Railways and four by the railroad brotherhoods. A majority decision to be binding."

The said "Commission of Eight" was duly selected as provided, and applied the settlement awarded by the Council of National Defense to approximately 225 railroads involving nearly 900 agreements and in doing so was required to make approximately 30,000 decisions. While the Commission of Eight was made up of an equal number of representatives of the employees and the railroads, it disagreed on only 3 cases; that is, there were only three matters submitted to the Commission upon which agreements were not reached.

On March 22, 1918, the Federal Director-General of Railroads issued his General Order No. 13, which approved and made effective a memorandum of understanding between the Regional Directors of the railroads and the executive officers of the Train Service Labor organizations. This order established a tribunal known as Railway Board of Adjustment No. 1, which was to adjust disputes growing out of the interpretation and application of agreements concerning rates of pay, rules and working conditions of train service employees. A copy of a portion of this memorandum is attached to this brief as Appendix II. An examination of certain portions which we have italicized in the Appendix will reveal that the Railway Labor Act borrowed freely from its phraseology.

This order was followed by General Order No. 29 (May 31, 1918) and General Order No. 53 (November 13, 1918) which provided similarly for Railway Boards of Adjustment Nos. 2 and 3, which were to have jurisdiction respectively over disputes involving shopcraft employees and disputes involving telegraphers, switchmen, clerks and maintenance-of-way employees.

During the period of Federal control, Railway Board of Adjustment No. 1 decided 3,000 cases without an appeal; Board No. 2 decided 2,000 cases with less than 10 appeals; and Board No. 3 decided 1,100 cases with only one appeal.

The following excerpt from the Report to the President by Walker D. Hines, Director-General of Railroads, for the 14-months period ending March 1, 1920, indicates the character of service rendered by the Boards of Adjustment during the period of Federal control:

> "At the beginning ofthe Railroad Administration in 1918 the Division of Labor was created as a division coordinate with the other divisions in the Railroad Administration and Mr. W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen, was appointed to the position of director of that division and has held it through the life of the Railroad Administration.
>
> "One of the early steps taken and an exceedingly important step, was the creation of certain bi-partisan boards of adjustment to deal with grievances of employees which could not be settled on the railroads between the local managements and the representatives of the employees. The principle of collective bargaining was frankly recognized in the creation of these boards because they were created by agreement between the representatives of the railroad labor organizations on the one hand and the regional directors of the United States Railroad Administration on the other hand. The work of these boards of adjustment has been eminently satisfactory. Each board has been composed of an equal number of expert representatives of the management and expert representatives of the employees. With a full practical knowledge of the problems the members of these boards have approached their work with the desire to do justice and with the recognition of the importance of reaching an agreement. The result is that in the several thousand cases which have come before the three boards which have been created there has been an agreement in practically every case.
>
> "Various orders of the Director-General have es-

tablished reasonable rules and working conditions, which were applicable in the very numerous cases where no rules and working conditions had been established prior to Federal control, and in some cases the rules and working conditions established by the Director-General have, by agreement, become a substitute for those which prevailed by agreement prior to Federal control.

"As a result of these defined working conditions and these boards of adjustment, the employees generally have felt that they were much better protected than formerly against arbitrary action.

"Naturally such a system requires time for it to be fully understood and successfully carried out by the vast number of local officials who are responsible for discipline and by the local labor representatives who with the local officials deal with grievances. Inevitably at first the new system had the effect in many instances of raising a question as to the authority of the local officials and caused some discouragement on the part of some of them and some misconception of the situation on the part of some employees. Nevertheless, the system has fully justified itself, and it is only a question of time and mutual understanding when local incidents of a discouraging character will disappear.

"It is an interesting commentary that on some of the largest railroads in the country, with the strongest and most effective managements, not a single case has come to one or more of these boards of adjustment. The local managements have dealt with the classes of employees represented on such board or boards so reasonably as to obviate the necessity for appealing thereto any grievances at all, and the committees representing the employees have adopted a reasonable attitude and avoided appeals to the Boards of Adjustment. Eventually this same successful treatment should be manifest on all the railroads and as to all classes of employees, if the system shall be maintained in some proper form."

These various Railway Adjustment Boards were dissolved in 1920 inasmuch as the period of Federal control of

railroads was then terminated by the Transportation Act of that year. Title III of this statute contained certain provisions designed to stabilize labor relations on the railroads. The device of Adjustment Boards was retained, although their establishment was made voluntary and not compulsory. Their jurisdiction was limited to disputes "involving only grievances, rules or working conditions," which is similar to the jurisdictional limit of the present Adjustment Board.(1)

Under this Act there were organized what were known as "Regional Train Service Boards of Adjustment"; one was established for the Southeastern Region on May 31, 1921; for the Western Region on August 25, 1921; and for the Eastern Region on November 9, 1921. The agreements setting up these boards were all substantially the same. Excerpts from that establishing the Southeastern Regional Board are reproduced as Appendix III hereof. As in the case of General Order 13 and the memorandum incorporated, the phraseology will be found to be similar to that used in the present Railway Labor Act.

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(1) For the ready reference of the court we reproduce here a portion of the Transportation Act of 1920:

"Sec. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provision of this title is authorized to hear and decide such dispute (41 Stat. L. 469).

"Sec. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof (41 Stat. L. 469).

"Sec. 303. Each such Adjustment Board shall * * * receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules or working conditions, not decided as provided in Section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of Section 302, represented upon any such Adjustment Board (41 Stat. L. 469)."

The United States Railroad Labor Board which is referred to in the agreement above mentioned as an appellate tribunal to which disputes could be referred in the event that the regional board could not agree upon an award was created by the provisions of the Transportation Act of 1920. It consisted of nine members, all appointed by the President, with the advice and consent of the Senate. Three members, however, were appointed from nominees submitteed by the carriers and three from those submitted by the employees. This Board had jurisdiction of (1) disputes relating to wages (which, as we have seen above, were not within the jurisdiction of the Adjustment Boards), and (2) disputes where the Adjustment Boards had jurisdiction but had found themselves unable to agree.[1]

This Board functioned with fair success for several years until it was held that its orders lacked legal sanction (*Penna. R. R. Co. vs. U. S. Railway Labor Board*, 261 U. S. 72; *Penna. System, etc., vs. Penna. R. R. Co.*, 267 U. S. 203). After the decisions in the above cited cases the Board lost much of its influence. Consequently the whole situation under the Transportation Act become so unsatisfactory that

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(1) We copy here further relevant provisions of the Transportation Act:

"Sec. 304. There is hereby established a board to be known as the 'Railroad Labor Board' and to be composed of nine members as follows:

(1) Three members constituting the labor group representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe; (2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and (3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate. Any vacancy on the Labor Board shall be filled in the same manner as the original appointment. * * * (41 St. L. 470.)

"Sec. 307(a). The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. * * * (41 St. L. 470.)

the carriers and employees joined in asking Congress to repeal Title III of this statute, and to enact in its stead a new statute, the Railway Labor Act of 1926.

This latter act also considered that the best available means of adjusting disputes growing out of grievances, or out of the interpretation or application of collective agreements was afforded by the now familiar device of Adjustment Boards. It therefore continued the pre-existing policy of the government in this regard.(1)

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(1) The following excerpts are from the Railway Labor Act of 1926:

"Sec. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

"The agreement—

"(a) Shall be in writing;

"(b) Shall state the group or groups of employees covered by such adjustment board;

"(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

"(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

"(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

"(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

"(g) Shall provide for the method of selecting members and filling vacancies;

"(h) Shall provide for the portion of expenses to be assumed by the respective parties;

"(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

"(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

"(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

"Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

The United States Railroad Labor Board was abolished by the Railway Labor Act of 1926, and there was established instead a board known as the National Board of Mediation, whose functions were quite different from those of its predecessor. The new Board had no power to decide any dispute or to make any order enforceable or otherwise. Its sole authority was to attempt to bring the parties into agreement by mediation.

After the enactment of the Railway Labor Act there was established by agreement a fourth train service board of adjustment, this one having jurisdiction over the Southwestern Region. In addition some system boards were created whose authority extended only to the system involved. Many carriers, however, refused either to become parties to the agreements establishing regional boards, or to agree to establish system boards. Thus the boards of adjustment which were established and did function under the Railway Labor Act of 1926 covered only a portion of the nation's railroad system.

In addition, however, the Act provided no effective method of handling cases to a conclusion where the members of the board disagreed, and a deadlock resulted. Of course, no appeal could be taken to the United States Railroad Labor Board for that body had been abolished, and in any event its decisions had lacked binding force. The experience of the National Board of Mediation in attempting to mediate disputes where the various adjustment boards had failed to agree was so unfortunate as to cause it to become reluctant to take jurisdiction.

Even with these handicaps, however, the Regional Boards of Adjustment had disposed of the following numbers of cases prior to June 21, 1934:

Western Board	6,013
Eastern Board	1,408
Southeastern Board	1,140
Southwestern Board	808
Total	9,369

The reverse of the picture is shown by the fact that prior to the date mentioned, the Western Board had deadlocked and released jurisdiction over 374 cases which it had been unable to settle. The Eastern Board had deadlocked in 24 cases. No statistics are available as to the situation regarding the other two Regional Boards, or any system boards which may have been operating.

The existence of this whole situation prompted Congress to give further consideration to the problem, and on June 21, 1934, there was enacted the Amended Railway Labor Act. This statute further continues the established federal policy. Opportunity is still freely given to any carrier or group of carriers and its or their employees to establish or maintain system or regional adjustment boards.(1)

In case such boards are not desired, however, provision is made for the National Railroad Adjustment Board, a tribunal the scope of whose operations is nation wide. It is provided that the Board and its various divisions are to be organized on the now familiar bi-partisan plan. The only material change in organization was made by providing that

(1) Section 3. Second, of the Act provides as follows:

"Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

in the event the Board is unable to agree, a non-partisan referee shall be selected to sit with the members and with them decide the case.

The National Railroad Adjustment Board was one of the administrative bodies whose organization and operations were considered by a committee appointed by the Attorney General of the United States for the purpose of investigating administrative procedure. In a monograph issued by this committee, representing the result of extensive research by its staff ("Administrative Procedure in Government Agencies," Senate Document No. 10, 77th Congress, First Session, Part 4), we find the following summary statements of the origin and background of the Board and the nature of the controversies submitted to it:

> "Train service organizations (engineers, firemen, hostlers, conductors, trainmen, and yard-service employees) have enjoyed collective bargaining for half a century, but, with some exceptions, other railroad employees did not become well organized until wartime Federal control of the railroads. Governmental control gave a strong impetus to organizational activities, and national unions grew rapidly from 1917 until 1920. The Director General entered into national agreements with most of the unions. Three bipartisan boards of adjustment were established to interpret and apply the agreements, each resembling the system boards, all bipartisan, that had been established before the war by agreement between managements of particular systems of railroads and the train-service organizations. When in 1920 the roads were returned to private ownership, many of the unions' gains were lost. Company unions were established, and some system boards of adjustment again created, all of which were of the bi-partisan type. By agreement between railroads and train service organizations, four regional boards were set up, all of which were also bi-partisan. In addition, Congress in 1920 created the Railroad Labor Board, a tripartisan organization representing carriers, labor, and the public. During its 6-year existence,

this Board disposed of 13,690 disputes, but largely at the insistence of organized labor it was finally abolished. The regional boards continued to dispose of many disputes, but gradually accumulated large numbers of deadlocked cases. Finally, in 1934, the National Railroad Adjustment Board was created to supersede the regional boards, and to take over their accumulations of deadlocked cases. The Adjustment Board also supplanted a large number of system adjustment boards. Thus, down to 1934, all agencies including system boards, regional boards, and national boards, had been bi-partisan, with the single exception of the Railroad Labor Board, which had not succeeded. And the personnel of each bi-partisan board consisted of regular employees of each side. It was therefore not surprising that the same pattern was followed when the National Railroad Adjustment Board was organized." (Pp. 1 and 2.)

* * * * *

"The Board's single purpose is to receive disputes between employees and carriers growing out of grievances or out of the interpretation and application of labor agreements. The agreements are comprehensive documents brought into being through processes of collective bargaining. As of June 30, 1939, there were 4,069 agreements on record, of which 3,556 were with national labor organizations. Most of the agreements contain more than a hundred 'rules' dealing with such matters as hours, piece work, shifts, overtime, holidays, lunch periods, emergency service, filling of vacancies, promotions, reduction of forces, seniority, grievances, apprentices. In addition, there are 'special rules' applicable to particular crafts. For example, a 'boiler maker' is defined, his work is elaborately classified, detailed provisions are made for his protection and safety while at work, and many other details about his duties and rights and liabilities are prescribed. All these rules with their various interpretations become exceedingly intricate, and numerous disputes arise concerning their interpretation and application." (P. 3.)

The National Railroad Adjustment Board was formally organized in August, 1934, and hearings of cases were started in December of that year. The last available statistics showing the number of cases handled extend to June 30, 1941. Prior to that date, the First Division of the Board had decided 6,138 cases, the Second Division, 658 cases, the Third Division, 1,755 cases, and the Fourth Division, 103 cases. (These figures are abstracted from the first seven Annual Reports of the National Mediation Board, which include reports of the National Railroad Adjustment Board as appendices.)

The whole history of the Adjustment Board idea, coupled with the highly significant history of the National Railroad Adjustment Board has revealed:

(1) That there exists a class of controversies between employers and employees growing out of grievances, or out of the interpretation or application of collective agreements, which in the aggregate is of such consequence as to constitute a threat to interstate commerce unless a means of orderly disposition is provided, and,

(2) That the Adjustment Boards have performed the function of settling such disputes with a high degree of success.

The petitioner insists that all of these controversies are justiciable in nature and could have been handled by the courts, and this conclusion is supported by the decision of this court in the case of *Moore vs. Illinois Central Railroad Company*, 312 U. S. 630.

The fact remains, however, that during the period when adjustment boards were handling such cases by the thousands, the diligence of petitioner's counsel has revealed and cited to the court only a score of reported cases, where the

jurisidiction of the courts has been invoked to pass upon them. It is significant also that all of the cases cited were instituted by employees and none by the carriers. Making due allowance for the number of cases which may have never attained the dignity of reported decisions, and then making comparison with the records of the adjustment boards, it is apparent that there has been a marked reluctance to submit controversies of this nature to the courts, but an entire willingness to submit them to administrative adjustment boards. Whether this attitude may have grown out of a consideration of the expense incident to legal proceedings, or out of a preference for the more elastic procedure of the adjustment boards, or from some other cause, it is useless to speculate. The fact of the existence of this preference is, however, clearly shown. It was a fact confronting the Congress when the Railway Labor Act was before it for consideration. The alternative before it, therefore, was not whether to entrust these controversies to the courts or to an adjustment board, but rather the alternative of entrusting them to an orderly administrative process which the parties could and would utilize, or leaving their settlement to the hazardous exigencies of industrial warfare.

That Congress in the furtherance of its declared purpose to stabilize labor relations on the railroads should adopt the method of order rather than disorder was inevitable. The wisdom of that choice cannot be denied. The form of the administrative board created was one sanctioned by a long and successful history and was the only form of orderly process of which the parties had shown any substantial disposition to avail themselves. That the form selected was unique is thus fully explained by the unique nature of the need it was created to fulfill.

From the foregoing discussion, therefore, we conclude that the National Railroad Adjustment Board, while somewhat unusual, both as to its form and its functions is in no sense an anomaly among administrative agencies. Its bipartisan organization is the natural outgrowth of years of experience which established this form of tribunal as being the most successful in the handling of those disputes between carriers and their employees which arise out of the interpretation of collective labor agreements. The Board operates in a technical field. Its duty is the highly important one of deciding the disputes submitted to it in such manner that no interruption to the operation of the transportation industry shall result. Its history shows conclusively that it is performing this duty. In short, the Board is an administrative agency organized in such manner as to be able to perform successfully a complicated function. In this respect, it differs in no way from other agencies of the Government. Its decisions are entitled to the same relative weight, and provisions made by the Railway Labor Act for their review are entitled to the same exclusive operation as is the case with relation to other statutes. It is submitted, therefore, that the general rules of law governing these subjects are fully applicable to the awards and orders of the National Railroad Adjustment Board.

The petitioner, however, insists that the above conclusion does not follow for the reason that decisions of the Board are not "quasi-judicial" in character. It argues that, since the decisions of such bodies as the Interstate Commerce Commission and the Federal Trade Commission *are* quasi-judicial, and since the National Railroad Adjustment Board is an entirely different type of tribunal, therefore its decisions cannot be "quasi-judicial."

This argument, however, completely miscontrues the

significance of the term "quasi-judicial," which is a word of reference rather than one of definition. It is used to characterize a vast number of governmental agencies, their powers and acts, on occasions when they are called upon to decide individual rights in a manner which is analogous to, but not identical with that employed by the courts. This analogy to judicial action may be close or remote, depending upon the character of the controversy, the degree of finality of the administrative order, and other factors. Thus, the term "quasi-judicial" may take on many shades of meaning, depending upon the agency to which it refers in a particular case. That the National Railroad Adjustment Board and its orders may not have the same degree of similarity to courts and their decrees as is the case in relation to some other agency of government, does not establish that the Board is not a quasi-judicial body.

Further in support of its position, the petitioner in its brief refers at length to certain statements which were made by the respondents before the lower courts in an effort to explain the functioning of the Board. We called attention to the fact that the decisions of the Board were to a degree prospective as well as retrospective in effect. We noted that the basic purpose of the Railway Labor Act is to bring about a peaceful relationship between carriers and employees. We suggested that this factor should influence and probably has influenced the Board in its decisions, and that a just compromise may, upon occasion, be more in keeping with the purpose of the Act than a decision which will establish the position of either party in *toto*. This statement has been seized upon by the petitioner as an assertion that it is the function of the Board to make new contracts for the parties rather than to interpret existing ones. We advance no such contention.

The Railway Labor Act contains two distinct sets of provisions, the one for the making of agreements between carriers and employees, and the other for their interpretation. The first provides for a process of (1) negotiation, (2) mediation under the supervision of the National Mediation Board, (3) arbitration if the parties agree thereto, and (4) in cases threatening a stoppage of essential transportation, proceedings before special Emergency Boards appointed to investigate and report. The second group of provisions deals with the interpretation and application of existing agreements and contemplates (1) conferences between the parties, (2) a hearing before and decision by the National Railroad Adjustment Board, and (3) judicial enforcement of the awards of the Board if they are not voluntarily applied. No tribunal established or provided for under the Act has any power to make an agreement for the parties, save only arbitration boards, which act, if at all, with the mutual consent of all concerned. Certainly the National Railroad Adjustment Board has no such power, and indeed, has no power to act in any way in connection with the making or modifying of agreements. We have not imputed any such authority to it, and any attempt to do so necessarily runs counter to the express terms of the statute.

It is submitted that all administrative agencies must look forward as well as back in the formulating of their decisions. To them is entrusted the task of implementing congressional policy. The fact that the National Railroad Adjustment Board may take this course at times is no indication that its decisions are not "quasi-judicial" in character.

Finally in this connection, the petitioner insists that the orders of the Board are not quasi-judicial because of the character of the hearings which the Board conducts.

We do not propose to embark upon any discussion of the merits or demerits of the Board's rules of procedure.* It is sufficient for our present purpose to note that the Board has full authority, under Section 3 First (u) of the Railway Labor Act, to adopt rules of procedure, that it has adopted such rules, and that its proceedings are covered thereby. If it be a fact that any such rule has the effect of violating any general principle of law or depriving any person of basic legal rights, the result is merely that the rule and proceedings conducted thereunder are subject to nullification by the courts in an action brought to enforce the resulting order. The character of the Board as being quasi-judicial or otherwise is not determined by the rules which it may adopt. To so hold would permit any tribunal to determine its own standing in this respect, regardless of the provisions of the statute which created it, or of the governmental policy underlying such a statute.

Summary. As noted in the above discussion, the petitioner has pointed out that the National Railroad Adjustment Board departs to some extent from the familiar pattern of administrative agencies. Attention is called to its bi-partisan organization, to the fact that its decisions are forward looking and not purely retrospective, and to its methods of procedure. The existence of these features is fully conceded.

The respondents, in an earlier section of this brief, have pointed out the existence of a rule of law to the effect

*Such a discussion was conducted before the Attorney General's Committee on Administrative Procedure, referred to above. Its conclusions in relation to the National Railroad Adjustment Board are set forth in its report, Senate Document No. 8, 77th Congress, First Session, pp. 185-188, inc.

Further in relation to the nature and procedure of the Board, we refer the court to an article entitled "The National Railroad Adjustment Board, A Unique Administrative Agency," by Mr. Lloyd K. Garrison, Dean of the Law School of the University of Wisconsin, printed in 46 Yale Law Journal 567, and a study entitled "The National Railroad Adjustment Board," by Mr. William H. Spencer, Dean of the School of Business of the University of Chicago and published by the University of Chicago Press.

that a special statutory method for the review of administrative orders is exclusive of all others. Petitioner asserts that the unique features to which it calls attention in connection with the organization and operation of the Adjustment Board, are effective to nullify this rule of law in this case and to render non-exclusive the method of review established by the Railway Labor Act.

Factual differences among cases will not cause the application of different rules of law unless they reach to the reasons for those rules. The reason for the rule that a statutory method of review of administrative orders is exclusive, is to be found in the natural reluctance of the courts to in any way interfere with the operation of declared congressional policy save as such interference may be required to protect constitutional rights. Where Congress has provided for administrative procedure designed to result in decisions, and a method of judicial review is established for such decisions, it must be presumed that the two are designed to complement each other in the furtherance of the basic purpose sought to be attained. A judicial overthrow of one of these two complementary elements may well result in the complete disruption of the congressional purpose. Only if it can be shown that no such result can follow in a given case can extra-statutory judicial intervention be justified.

The petitioner has sought to make such a showing by pointing out certain distinguishing features in connection with the organization and procedure of the Board. These features, however, do not establish that the judicial channels provided for a review of the Board's orders can be by-passed and disregarded without endangering congressional policy. To the contrary, they lead to an exactly opposite conclusion.

The extraordinary character and functions of the

Board indicate the existence of a definite purpose on the part of Congress to make provision for the solution of perplexing and delicate problems. Prior experience had indicated that these problems could not be solved by the mere establishment of an administrative board, regardless of kind. The earlier adjustment boards had succeeded in settling the sort of disputes under consideration where other agencies had failed. Hence, it was but reasonable to select this type of tribunal for the furtherance of the congressional plan. Its unique character is ample evidence of the unique need which it was designed to fill.

Congress was not content, however, with the mere establishment of the Board. It provided a special method whereby its decisions might be enforced and reviewed. The petitioner insists that the character of the Board itself may be projected upon the review procedure established in order to determine whether such procedure is exclusive or otherwise. We agree with this contention but have shown that such a projection reveals a congressional plan of combined administrative action and judicial review carefully conceived, precisely integrated and proven successful in operation. The introduction of an extraneous method of review is likely to disturb the equilibrium of this whole specialized structure and bring about its collapse.

We submit, therefore, that the unique character of the Board is effective to establish the exclusive nature of the statutory provisions for review rather than the contrary.

B. IT IS THE INTENT OF THE RAILWAY LABOR ACT THAT THE PROCEDURE ESTABLISHED THEREIN FOR THE REVIEW OF ADJUSTMENT BOARD ORDERS SHALL BE EXCLUSIVE

Having considered the inferences which may be drawn from the character of the Adjustment Board in relation to

the exclusive nature of the statutory review proceedings, we next desire to call the court's attention to the portions of the statute which provide for such review in order to further explore the congressional intent underlying it. The Railway Labor Act does not in terms declare that this review procedure shall be exclusive, but such an intent is clearly implied by the language used.

In the first place, it should be noted that Section 3 First (m) of the Act provides that:

> "The awards shall be *final and binding upon both parties* to the dispute, except insofar as they shall contain a money award." (Emphasis supplied.) (U. S. C. Title 45, Section 153 First (m).)

It is clear that the words italicized in the above quotation do not give to the awards of the Board any absolute finality because provision is made in a subsequent section for the review of such awards by the courts. On the other hand, it may not be concluded that the phrase in question is mere surplusage and therefore meaningless. A reasonable construction of this language which avoids both of these extremes, is to the effect that Congress intended the awards to be final unless set aside in the course of proceedings specifically authorized for the purpose of their review. Such a construction imputes a definite and logical significance to this provision. So interpreted, the statutory language contains a clear implication that the review procedure established is to be exclusive.

There is yet another conclusion, however, to be drawn from the language of Section 3 First (m) above quoted. This court has held that the existence of the Adjustment Board and the availability of an administrative remedy through the operation of its procedure does not prevent original resort by a claimant to the ordinary processes of the courts. (*Moore vs. Illinois Central Railroad Company*, 312 U. S. 630.) In the case of *Adams vs. New York, Chi-*

cago & St. Louis Railroad Company, 121 Fed. 2d 808, 810, the court held on the authority of the *Moore* case that "the employees' action may be brought, at their election, either in a court, or settled by the administrative remedies prescribed by said Act." It has further been held in the case of *Austin vs. Southern Pacific Company*, 123 Pac. 2d 39 (decided March 3, 1942, by the District Court of Appeals for California, First District, Division 1), that where an employee has elected to pursue his administrative remedy before the Adjustment Board and has received an adverse decision, he is precluded entirely from all resort to the courts. The court quotes in support of its decision the statutory provision that the awards of the Board shall be "final and binding upon both parties to the dispute."

This ruling appears to be in accord with the decisions of the federal courts construing the reparations provision of the Interstate Commerce Act (provisions for the review of reparations orders being, as already noted, almost identical with those established for the review of orders of the Adjustment Board) where it has been held that one who voluntarily seeks the administrative remedy provided in the Act is limited in his further relief to the statutory procedure for enforcement and may not claim more before the courts than he received at the hands of the Commission. See *Baltimore and Ohio Railroad vs. Brady*, 288 U. S. 448; *Western New York & Penn. Railroad Company vs. Penn. Refining Company*, 137 Fed. 343, 355; *Terminal Warehouse Company vs. Penn. Railroad Company*, 297 U. S. 500, and *Minds vs. Pennsylvania Railroad Company*, 237 Fed. 267. To our knowledge no case has ever arisen where a claimant who has been denied a reparation order by the Interstate Commerce Commission has thereafter resorted to the courts. This fact in itself is not without significance considering the age of the statutory provision involved. Cer-

tainly the implication from the above cited cases is to the effect that no such action can be brought.

If the employee claimant who has elected to pursue his administrative remedy before the Adjustment Board is concluded by an adverse decision and if, as the petitioner here contends, a decision adverse to the carrier is so completely ineffective that the latter may immediately file an action *de novo* for a declaratory judgment seeking a re-examination and redetermination of the very issues considered by the Board and is not even under legal compulsion to await the bringing of a statutory enforcement action and the securing of a review therein, it follows that the employee who submits his case to the Board has everything to lose and nothing substantial to gain thereby. The carrier on the other hand, may win an absolute and final victory before the Board or, if defeated, its loss is legally inconsiderable.

The inevitable consequence of such a situation would be that employees would become increasingly reluctant to submit their cases to the Board and the purpose of the Act to provide for the speedy and peaceful adjustment of such cases would be correspondingly defeated.

In considering the question of the exclusive nature of the review procedure of the Act, we are not limited to a consideration of the provisions of Section 3 First (m).

Section 3 First (p), which establishes the procedure for review, provides for certain advantages to a plaintiff seeking to enforce an award of the Board, advantages which are not available to plaintiffs generally. While this paragraph of the statute is reproduced in Appendix I, we wish to set it out in full here, italicizing those portions which seem to us to be of particular significance. The paragraph reads as follows:

> "If a carrier does not comply with an order of a division of the Adjustment Board within the time

limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States *for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates,* a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit *the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated,* and except that *the petitioner shall not be liable for costs* in the District Court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he *shall be allowed a reasonable attorney's fee,* to be taxed and collected as a part of the costs of the suit. The District Courts are empowered under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board." (Emphasis supplied.) (U. S. C. Title 45, Section 153 First (p).)

It is apparent that the statute contemplates four distinct advantages to persons appearing as parties plaintiff in this type of action. These advantages are:

(1) A choice of venue which is much wider than that available to plaintiffs in other actions.

(2) A lightened burden of proof growing out of the provision that the findings of fact of the Board are to be considered *prima facie* correct.

(3) Non-liability for costs save upon appeal by the plaintiff.

(4) An opportunity to recover reasonable attorney fees from the defendant carrier.

The petitioner has asserted that these provisions amount to little more than the normal perquisites of any plaintiff in any litigation. It is apparent, however, without argument, that a much more considerable advantage was sought to be created. There would be no purpose in including such provisions in a statute if the only intent was to give to the parties the same rights which they would normally enjoy as plaintiffs in any event.

Taken as a whole, these provisions are designed to accomplish three results. In the first place, they are intended to make court proceedings based on awards of the Board unattractive to carriers. Similar provisions in the Interstate Commerce Act for the review of reparations orders of the Interstate Commerce Commission have been construed as having this effect. See *Meeker vs. Lehigh Valley Railroad Company*, 236 U. S. 412, and *St. Louis and San Francisco Railroad Company vs. Spiller*, 275 U. S. 156. It is apparent, therefore, that the purpose of the framers of the statute was to discourage, insofar as possible, noncompliance with the awards of the Board, and to give to them a degree of practical finality which they would not otherwise possess.

Secondly, the procedural obligation ordinarily falling upon a plaintiff to make a *prima facie* case is lightened by providing that the findings of the Board shall be considered as *prima facie* correct. The burden of proof is thereby shifted in part to the defendant carrier.

Thirdly, the financial burdens of litigation are in part removed from those seeking enforcement. The plaintiff in such an action is permitted a choice of venue most convenient to himself, and is therefore not subjected to the financial burden of filing suit in a district where the principal operating office of the carrier is located, an obligation which is often onerous. The plaintiff faces no risk of

financial loss through the imposition of court costs except upon his own appeal. Finally, he is insured an opportunity to procure capable counsel without expense to himself.

The total result of all of these provisions is to impress upon the orders of the Adjustment Board a substantial degree of finality. That effect will be nullified if the carrier is free to secure a review through some form of action other than that provided in the statute where these same advantages will not be and cannot be made available. There can be no question but that the advantages referred to were established by Congress in furtherance of the basic purpose underlying the statute, which was to provide a tribunal which might adjust and decide the type of cases submitted to its jurisdiction with as little interference as legally possible from the courts. To the extent that extra-statutory review is permitted, therefore, congressional purpose will be nullified. Neither an action for a declaratory judgment nor any other form of action for review can be justified if such is to be the result. We know of no better expression of this thought than that contained in the opinion of the Court of Appeals. The statement of the court is too lengthy to be reproduced here in full but may be found on pages 334-336 of the Record, to which we refer the Court.

The petitioner attempts to avoid the conclusion above stated by asserting that even after a declaratory judgment action is filed to review an order of the Adjustment Board, the employees may still file suit for enforcement under the statute and thus secure for themselves the benefits intended by the Act. It cites cases to the effect that where jurisdiction of an action *in personam* is secured by one court, another court is not barred from acquiring jurisdiction in another case involving the same issues. The petitioner further expresses the belief that the court before whom a declaratory judgment action was pending might, in

the exercise of a sound discretion, stay its proceedings until the statutory action could be decided.

This line of argument has two serious flaws. In the first place, none of the cases cited by the petitioner involves a situation where the two pending suits were respectively a non-statutory and a statutory review proceeding. If the rule for which petitioner contends is to be applied in such cases, it will result in the nullification of the whole body of law to the effect that statutory methods of review for administrative orders are to be pursued to the exclusion of others. If such a rule is applicable in the case at bar, it is equally applicable to cases involving the review of decisions of the National Labor Relations Board, Federal Trade Commisison and other administrative agencies considered in the first section of this brief. It would permit the bringing of a non-statutory action to review a decision of any of such bodies, subject, however, to its being stayed at the sound discretion of the court, upon the filing of a statutory action for review. The courts, however, have not accepted this view of the situation but have dismissed non-statutory actions for lack of jurisdiction. We conclude, therefore, that however authoritative the petitioner's cases may be to the effect that a court is not debarred from accepting jurisdiction in a case because of the fact that another court has theretofore acquired jurisdiction to try the same issues, they are ineffective to establish the proposition that such other court *has properly acquired jurisdiction in the first instance* in the face of an objection that the action first filed involved a non-statutory method of review.

In the second place, the validity of the petitioner's argument is entirely dependent upon the assumption that the court before which the non-statutory action is pending will in fact stay that action until the statutory proceeding

is brought to a conclusion. We use the word "assumption" advisedly. We are aware of the fact that a sound judicial discretion is not synonymous with caprice, and that court orders made in the exercise of such discretion are subject to review and reversal. Nevertheless, any realistic approach to the question must recognize that judicial discretion, especially in such a little charted field as that of administrative law is necessarily elastic and unpredictable. If the federal courts may entertain actions for declaratory relief as a means of review of orders of the Adjustment Board, no reason is apparent why the state courts may not do so as well in proper cases, and in those jurisdictions where such actions are permitted. No one can deny that concepts of the proper exercise of judicial discretion differ widely from jurisdiction to jurisdiction. Hence, the petitioner's contention that the employees may depend on judicial discretion for the protection of the rights granted them by the Railway Labor Act subjects the enjoyment of those rights to speculative considerations whose seriousness may depend upon the jurisdiction where the suit is brought, a situation which was certainly not contemplated by Congress. We submit that the adoption of the petitioner's contention would produce unending litigation in state and federal courts and might well result in legal chaos as far as this type of action is concerned.

From all of the foregoing, we conclude that the Railway Labor Act provided for employees or their representatives seeking enforcement of an award of the Adjustment Board certain rights by way of extraordinary advantages in the prosecution of an action for that purpose; that these advantages constitute an aliquot part of the whole statutory scheme; that if the courts entertain actions for declaratory judgment as a means for extra-statutory review, the advantages provided in the statute for employees will either

be lost or their enjoyment rendered precarious, and that the statutory scheme will be thereby disrupted and nullified. No means of avoiding this undesirable result is apparent save by concluding that the method of review provided by the statute is exclusive and such, we submit, was the clear intent of Congress.

The decision of this court in the case of *Moore vs. Illinois Central Railroad Company*, 312 U. S. 630, in no way militates against this conclusion. In the *Moore* case, an employee brought an action for wrongful discharge. The defendant carrier contended that the action was prematurely brought "because of his (plaintiff's) failure to exhaust the administrative remedies granted him by the Railway Labor Act." The court, however, found "nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court." In the course of its opinion the court stated that:

> "Neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based upon a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

There is nothing either in the decision of this case or the reasoning underlying it which is in any way contrary to respondents' position here. The fact that the Railway Labor Act evidences no intent that the mere existence of the administrative procedure therein provided shall exclude direct resort to the courts does not establish that, where administrative relief under the Act has been sought and secured, the courts are free to ignore the statu-

tory channel provided for its review or to ignore the administrative order itself and proceed *de novo* to hear the controversy on its merits. Thus, the actual decision in the *Moore* case constitutes no precedent for the case at bar because of the wide difference existing in the circumstances of the two actions.

The petitioner, however, calls attention to the court's statement quoted above as to the "voluntary" nature of the statutory scheme for "peaceful adjustment and mediation" of disputes. It construes this language as holding that where this voluntary procedure has been adopted and an order issued, the order itself is voluntary in nature and without any legal effect even to the extent of limiting the avenue of review to that established by the statute.

We do not understand the court's language as implying that there is no element of legal compulsion inherent in any phase of the Railway Labor Act or the proceedings therein authorized. Indeed, in the case of *Virginian Railway Company vs. System Federation No. 40*, 300 U. S. 515 the Court expressly recognized that such compulsion was exerted as to a number of elements in the statutory scheme.

The statement here in question must be construed in relation to the facts and issues before the court. So construed, it is clear that the court referred to the *resort* to the administrative procedure in the Act as being voluntary in that the complaining party was not bound to submit his rights to administrative determination but might choose between the administrative and the judicial procedure available. The court did not intend to, nor did it characterize the awards of the Board as being merely precatory in effect. It did not hold that a court may ignore them and entertain an action whose effect would be to hear the whole controversy *de novo* to the preclusion of the prescribed statutory review.

The court below rested its decision on the proposition that the review procedure in the Railway Labor Act is exclusive. This conclusion we believe to be correct. However, the court would not have needed to go so far in order to justify a dismissal of this action. It is to be remembered that this is a suit for declaratory judgment. While jurisdiction to entertain an action for declaratory relief may not be defeated on account of the existence of another adequate remedy, nevertheless as above noted, such relief may not be granted as a substitute for a *special statutory remedy*. Whatever may be said of the review procedure provided for in Section 3 First (p) of the Railway Labor Act as to its exclusiveness or otherwise, it can scarcely be denied that it contemplates a special statutory remedy. The fact of the existence and availability of such a remedy precludes the granting of a declaratory judgment in substitution for it.

Finally in this connection, we recognize that all of the above discussion and the conclusions reached therein are subject to one important limitation. Any statutory method of review must be adequate to protect the legal and constitutional rights of the parties or it cannot be considered as excluding a resort to other remedies.

The petitioner asserts that the statutory review is not adequate to protect its legal rights. The simple and final answer to this contention is found in the fact that an order of the National Railroad Adjustment Board has no legal force in and of itself, and can acquire no such force until it has been made the basis of a successful enforcement action. In the course of such an action, the courts are fully empowered to inquire into the legal propriety of the award and make such orders as may be necessary to protect the rights of the parties. No carrier, therefore, can come under any legal compulsion as a result of an

Adjustment Board award until after it has had its day in court.

Although we believe that this fact disposes conclusively of all of petitioner's claims of deprivation of rights without judicial hearing, nevertheless it should be noted that the petitioner asserts that it is under certain elements of extra-legal pressure which virtually compel it to comply with the award of the Board without such a hearing. It contends that this consideration should induce the court to rule in its favor in this case. We wish accordingly, to note briefly certain of the claims made in this connection.

In the first place, the petitioner contends that the employees have refused to exercise their right to bring an enforcement action and instead have relied on their collective economic bargaining power to bring about compliance with the award. It represents itself as being faced with a threat of strike sufficient to induce it to sacrifice its legal rights as the price of labor peace. It is noteworthy, however, that the award and order of the Adjustment Board were issued nearly four years ago. This alleged threat of strike has been effective during this entire period, but it has not produced a sufficient degree of economic pressure to cause the petitioner to recede one jot from its original position. The fact is that petitioner has had no strike on its property and insofar as we are aware, has faced no serious threat of strike. Certainly such a threat, if existent, has been ineffective to produce any compulsion as far as the petitioner is concerned. This claim, therefore, has little weight.

The petitioner furthermore asserts, however, that it has been necessary for it to build up a reserve approximating $80,000 per year to cover its contingent liability to the respondents growing out of the award of the Board. It will

be recalled that this award is one which construed an existing contract. The contract in question contains the following provision:

> "Should either the management or the enginemen and firemen desire to change any or all these regulations, the party desiring to make the change shall notify the other party in writing of the desired change; and no change will be made, except by mutual consent, until thirty days after such notice has been given." (Article 22, page 39 of the Record.)

The Railway Labor Act likewise permits a change in any contract between a carrier and employees on thirty days' notice, subject to some extensions in the period in the event that the dispute comes before the National Mediation Board or in the event that an Emergency Board is appointed to investigate and report. It can be safely stated, however, that the petitioner could have entirely abrogated those portions of the agreement upon which the award is based in three or four months' time at the most. It could, therefore, have entirely eliminated the source of the contingent liability which it claims at any time either before or after the issuance of the award in question.

It is no answer to this argument to say that the petitioner deemed it inexpedient to seek to change its rules on account of the possibility of a serious labor dispute resulting. Where a litigant has an opportunity to eliminate a threat of loss but hesitates to do so on account of considerations of business expediency, he cannot expect the courts to come to his relief. It is not the function of the judiciary to seek to equalize the economic positions of parties who appear before it.

In the foregoing discussion we have considered the factors which the petitioner asserts are effective to obstruct the means of access to the courts provided by the Railway

Labor Act for this type of case, and have found them to be illusory or self-created. A litigant may not nurture conditions asserted to be perilous to itself and then ask the courts to relieve it of the peril. Even, however, if the petitioner were able to establish that the situations of which it complains were truly burdensome and truly beyond its control, it would not thereby have advanced its case. The courts are not concerned with extra-legal reasons why a party may not desire to submit his rights to a special method of adjudication. If the road to the courts is open as a matter of law, the judiciary cannot be expected to clear it of all practical obstacles which may render travel difficult. The removal of such obstacles is a matter of legislative and not judicial consideration.

We conclude, therefore, that no legal compulsion can become effective against the petitioner as a result of an award of the Adjustment Board until after a full judicial hearing as provided by the Railway Labor Act; that the petitioner will have the opportunity to assert any and all defenses which it may have in such a hearing, and that accordingly, it is not deprived of any legal or constitutional right by being required to await the bringing of a statutory action instead of proceeding itself to seek review by declaratory judgment.

In summary, as to this section of the brief, therefore, we submit that the Railway Labor Act by necessary implication requires that the review procedure established by it for the orders of the Adjustment Board shall be exclusive. The provision that awards of the Board shall be "final and binding" clearly indicates such an intent as do those portions of Section 3 First (p) which establish special advantages for employees in enforcement actions, advantages which form an integral part of the whole statutory scheme and which would be annulled were another method

of review to be permitted. We have shown further that there is no legal inadequacy inherent in the statutory proceeding because no legal obligation can be created until after full judicial hearing. This action, therefore, is intended as a substitute for a remedy made exclusive by statute and one which constitutes a "special statutory remedy" especially provided for the review of decisions of the Board. Under such circumstances, an action for declaratory judgment will not lie.

CONCLUSION

We have presented the issues of this case from two basic points of view:

In the first place, we have directed the court's attention to the legal principles which have been developed and which govern this type of action. We have shown that:

(A) Where a statute provides a means for the review of administrative orders, that means, if adequate to protect legal rights, is exclusive of all others.

(B) Where an administrative order can be rendered legally effective only through enforcement proceedings provided for by statute, and where, in the course thereof, the parties have a full opportunity to assert their legal rights, the statutory proceedings afford an adequate and accordingly an exclusive method of review.

(C) The courts are limited in the granting of declaratory judgments to causes of action where no special statutory remedies exist for the type of controversy sought to be adjudicated.

In the second place, having developed these legal principles, we have applied them to the National Railroad Adjustment Board, its awards and orders, and to the provi-

sions of the Railway Labor Act for the enforcement of such awards and orders. We have seen that:

(A) The Adjustment Board was established to fulfill a special purpose which no other type of agency seemed able to perform. Its form of organization, therefore, is one closely related to its functions and the unusual character of both indicate the existence of a highly specialized congressional purpose. The reason for the rule that a statutory method for the review of administrative orders is exclusive is to be found in the reluctance of the courts to interfere with a specialized statute designed to effect a specialized result. The higher the degree of specialization, the more applicable becomes the rule. Hence, the unique character and functions of the National Railroad Adjustment Board should render its orders more rather than less exempt from extra-statutory review.

(B) The terms of the Railway Labor Act indicate an intent that the method of review prescribed should be exclusive, both to insure that "final and binding" character which the Act attributes to the orders of the Board, and to insure to employees the special advantages granted them in the course of enforcement proceedings. These advantages, being designed as a means of effectuating congressional intent, cannot be taken away without doing violence to the basic purpose of the Act. Inasmuch as the advantages in question can be realized only in the statutory proceeding, it follows that such a proceeding was intended to be exclusive of all others. Further in this connection, we have shown that the statutory method of review is constitutionally and legally adequate because it imposes legal compulsion only after judicial hearing.

Accordingly, we submit that the Railway Labor Act provides an exclusive remedy for the review of decisions of the National Railroad Adjustment Board or at least a

special remedy designed for that purpose; that non-statutory relief by declaratory judgment cannot be substituted therefor; that the lower courts properly found that they were without jurisdiction to entertain the suit, and that their decision should accordingly be sustained.

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APPENDIX I

EXCERPTS FROM RAILWAY LABOR ACT AS AMENDED JUNE 21, 1934. (U. S. C. TITLE 45, CHAPTER 8.)

GENERAL PURPOSES

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions. (U. S. C. Title 45, Section 151a.)

GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." (U. S. C. Title 45, Section 151 First.)

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (U. S. C. Title 45, Section 151 Second.)

CONFERENCES FOR SETTLEMENT OF DISPUTES

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice; *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." (U. S. C. Title 45, Section 151 Sixth.)

NATIONAL RAILROAD ADJUSTMENT BOARD

Establishment and Members

"Sec. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board,'

the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act. (U. S. C. Title 45, Sec. 153, Paragraph First (a).)

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party." (U. S. C. Title 45, Section 153 First (g).)

Divisions

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees. (U. S. C. Title 45, Sec. 153, First (h).)

Jurisdiction

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (U. S. C. Title 45, 153 First (i).)

Hearings

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them." (U. S. C. Title 45, Section 153 First (j).)

Neutral Referee

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee,' to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or

any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees. (U. S. C. Title 45, 153 First (l).)

Publication and Effect of Awards

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute." (U. S. C. Title 45, 153 First (m).)

Majority Necessary to Make Award

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it." (U. S C. Title 45, 153 First (n).)

Orders Directed to Carriers to Apply Awards

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the

sum to which he is entitled under the award on or before a day named." (U. S. C. Title 45, 153 First (o).)

Enforcement and Review of Orders

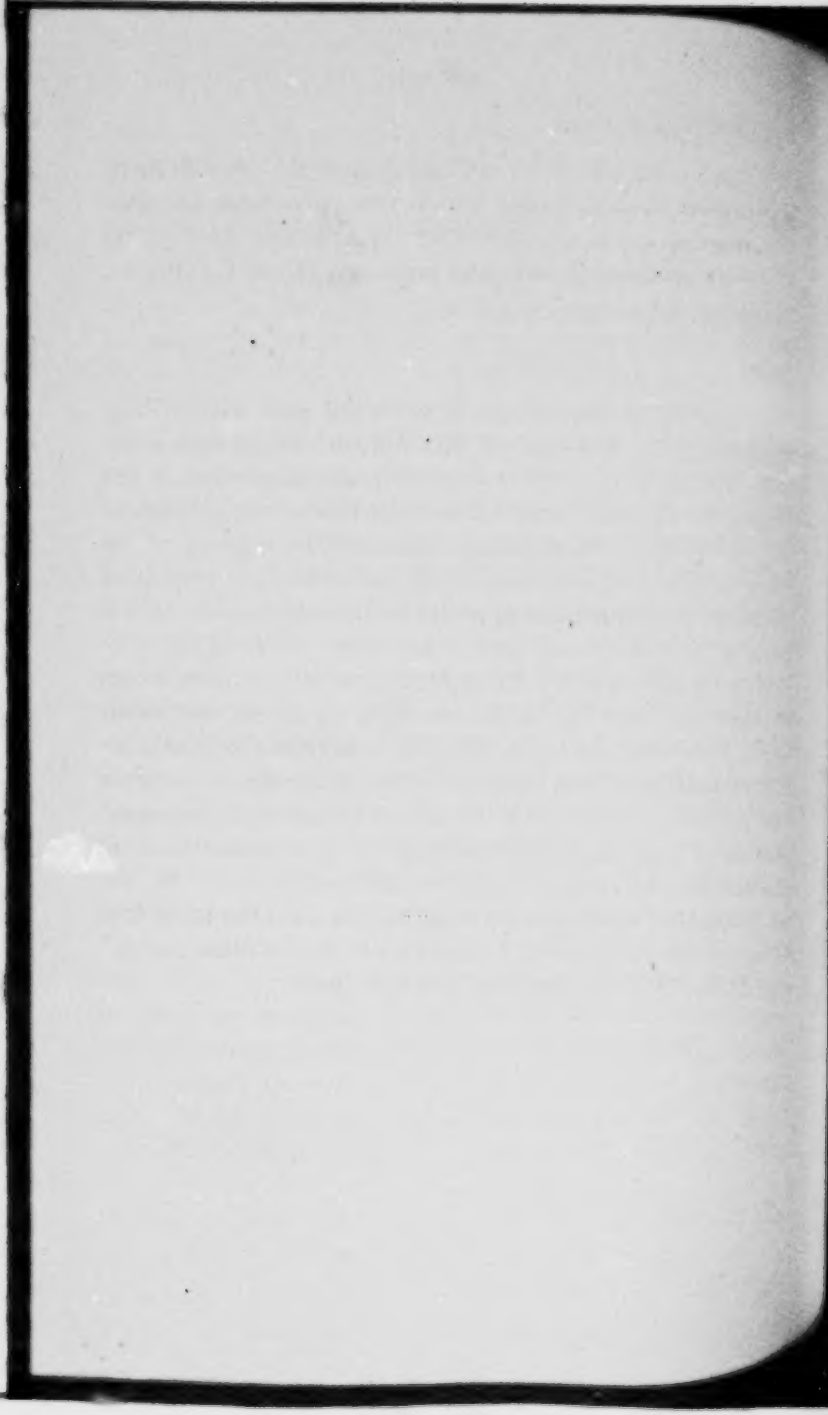
"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the District Court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The District Courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise as may be appropriate to enforce or set aside the order of the division of the Adjustment Board." (U. S. C. Title 45, 153 First (p).)

Limitation of Actions

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after. (U. S. C. Title 45, 153 First (q).)

Rules

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group." (U. S. C. Title 45, Section 153 First (a).)



APPENDIX II

EXCERPTS FROM MEMORANDUM OF UNDERSTANDING INCORPORATED IN GENERAL ORDER 13 OF THE FEDERAL DIRECTOR-GENERAL OF RAILROADS ISSUED MARCH 22, 1918

"*It is understood,* That *all controversies growing out of the interpretation or application* of the provisions of the wage schedule or *agreements which are not promptly adjusted by the officials and the employees* on any one of the railroads operated by the Government shall be disposed of in the following manner:

"1. There shall be at once created a commission, to be known as Railway Board of Adjustment No. 1, to consist of eight members, four to be selected by the said regional directors and compensated by the railroads, and one each by the chief executive officer of each of the four organizations of employees hereinbefore named and compensated by such organizations.

"8. The broad question of wages and hours will be considered by the Railroad Wage Commission, but *matters of controversies arising from interpretations of wage agreements,* not including matters passed upon by the Railroad Wage Commission, shall be decided by the Railway Board of Adjustment No. 1, when properly presented to it.

"10. Personal *grievances or controversies arising under interpretation of wage agreements, and all other disputes* arising between officials of a railroad and its employees, covered by this understanding, *will be handled in their usual manner by general committees of the employees up to and including the chief operating officer of the railroad* (or some one officially designated by him), *when, if an agreement is not reached,* the chairman of the general com-

mittee of employees may refer the matter to the chief executive officer of the organization concerned, and if the contention of the employees' committee is approved by such executive officer, then the chief operating officer of the railroad and the chief executive officer of the organization concerned *shall refer the matter, with all supporting papers,* to the Director of the Division of Labor of the United States Railroad Administration, who will in turn present the case to the Railway Board of Adjustment No. 1, which board shall promptly hear and decide the case, giving due notice to the chief operating officer of the railroad interested and to the chief executive officer of the organization concerned of the time set for hearing.

"12. In hearings before the Railway Board of Adjustment No. 1, in matters properly submitted for its consideration, the railroad shall be represented by such person or persons as may be designated by the chief operating officer, and the employees shall be represented by such person or persons as may be designated by the chief executive officer of the organization concerned.

"14. In each case an effort should be made to present a joint concrete statement of facts as to any controversies, but the board is fully authorized to require information in addition to the concrete statement of facts, and may call upon the chief operating officer of the railroad or the chief executive officer of the organization concerned for additional evidence, either oral or written.

"15. *All decisions of the Railway Board of Adjustment No.* 1 *shall be approved by a majority vote of all members of the board.*

"16. After a matter has been considered by the board, and *in the event a majority vote can not be obtained, then any four members of the board may elect to refer the matter upon which no decision has been reached to the Director-General of Railroads for a final decision.*"

APPENDIX III

EXCERPTS FROM AGREEMENT ESTABLISHING SOUTHEASTERN REGIONAL BOARD OF ADJUSTMENT UNDER THE PROVISIONS OF TITLE III OF THE TRANSPORTATION ACT OF 1920

"(1) That *all disputes growing out of personal grievances or out of the interpretation or application of the schedules, agreements or practices* now, or hereafter established on the railroads signatory hereto, *which cannot be adjusted by direct conference between representatives of the individual railroad and its respective employees,* shall be disposed of in the following manner:

"(2) There shall be created as soon as practicable a Railroad Board of Adjustment to be known as 'Train Service Board of Adjustment for the Southeastern Region' (hereinafter referred to as the Board), to consist of *eight members; four to be selected by the said railroads, and one each by the chief executive officer of each of the four organizations of employees,* hereinbefore named.

"(7) The Board shall render decisions on all matters in dispute, as provided in Sections 1 and 8 hereof, and when properly submitted to the Board.

"(8) *Disputes* arising between a railroad and its employees covered by this agreement *will be handled in their usual manner by general committees of the employees up to and including the chief operating officer of the railroad* (or someone officially designated by him), when, if an agreement is not reached, the Chairman of the general committee of employees may refer the matter to the chief executive officer of the organization concerned, and if the contention of the employees' committee is approved by such executive officer, then the chief operating officer of

the railroad and the chief executive officer of the organization concerned shall *refer the matter, with all supporting papers, to the Board,* which Board shall promptly hear and decide the case, giving due notice to the chief operating officer of the railroad interested and to the chief executive officer of the organization concerned, of the time set for hearing.

"In the event that either party to a dispute declines to become a party to a joint submission, as above provided, then either party may refer the dispute to the Board under such regulations as the Board may prescribe.

"On a written petition signed by not less than one hundred unorganized employees of the classes covered by this agreement, directly interested in the dispute, the Board shall hear and decide any dispute covered by this agreement; provided, that no dispute over an interpretation of an existing agreement, rule or practice which has been agreed to or accepted by the management and the duly constituted committee representing the employees parties thereto, shall be considered as a dispute under this agreement.

"(13) *All decisions of the Board shall be approved by a majority vote of the full membership of the Board, and shall be final and binding upon the parties to the dispute.*

"(14) If a dispute has been considered by the Board, *but a majority vote, as provided above, cannot be obtained, then, upon the request of either party to the dispute, the Board shall certify such dispute to the United States Railroad Labor Board for final decision, accompanied by all supporting papers."*